

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JOSEPHINE LINKER HART, JUDGE

DIVISION I

CACR07-963

February 27, 2008

ANTHONY TYRONE MARTIN
APPELLANT

APPEAL FROM THE BRADLEY
COUNTY CIRCUIT COURT
[NO. CR2006-105-1]

V.

HONORABLE SAMUEL B. POPE,
JUDGE

STATE OF ARKANSAS

APPELLEE

AFFIRMED

A jury found appellant, Anthony Tyrone Martin, guilty of two counts of residential burglary, one count of felony theft of property, and one count of misdemeanor theft of property. On appeal, he argues that the evidence was insufficient to support the burglary convictions. We affirm.

On October 9, 2006, two burglaries occurred in Warren, Arkansas: one at the Hunter residence and one at the Norton residence.¹ David Hunter testified that there were pry marks

¹Appellant's abstract is flagrantly deficient. His counsel failed to abstract the victims' testimony and relevant testimony from other witnesses, choosing instead to abstract only testimony helpful to his argument on appeal. Nevertheless, we may go to the record to affirm. See *McGehee v. State*, 344 Ark. 602, 43 S.W.3d 125 (2001). We recommend that counsel review relevant court rules and case law on abstracting requirements.

on the door of his residence, the door lock was damaged, and items were missing from the residence. Krystal Harmon, who resided at the Hunter residence, testified that the property was discovered missing at around 1:00 p.m. and recovered around 5:00 or 6:00 p.m. Terry Norton testified that around 3:30, they discovered that the front door of their residence had been pried open. Items had been taken from the residence. He further testified that the door had been locked at 10:30 a.m. that day. Shawn Hildreth, a criminal investigator for the Warren Police Department, testified that the doors on both residences were pried open.

Hildreth further testified that on that same day, he executed an unrelated search warrant at a Warren apartment that belonged to Glen Hines and found there items taken in the two burglaries. Present in the apartment were Hines, Demetrius Butler, and appellant. Also found in the apartment was a duffle bag containing a pry bar. Appellant admitted to Hildreth that the duffle bag and the pry bar were his. Hildreth opined that the pry bar was the only pry bar that could have made the marks on the door of the Hunter residence. He testified that the pry bar was unique because of the way it had been bent.

Harold Durden testified that appellant had borrowed the pry bar from him in September and had never returned it. He testified that he was sure it was the same pry bar and that he was able to identify the bar because of the way it was bent. He testified that he bent the bar when he stuck the bar into the landing gear of a goose-neck trailer to lower the landing gear and raise the trailer.

Glen Hines testified that appellant was at his apartment about every day. Hines testified that, around 11:30 a.m. on the day of the search, he observed appellant coming to the

apartment with the bag on his shoulder. Hines testified that appellant brought the stolen items into the apartment. According to Hines, he told appellant not to bring the items into his residence and appellant left, but when Hines also left the apartment, appellant brought the items and the bag back inside.

Our criminal statutes provide that “[a] person commits residential burglary if he or she enters or remains unlawfully in a residential occupiable structure of another person with the purpose of committing in the residential occupiable structure any offense punishable by imprisonment.” Ark. Code Ann. § 5-39-201(a)(1) (Repl. 2006). When the sufficiency of the evidence is challenged on appeal, we review the evidence in the light most favorable to the appellee and affirm if there is substantial evidence to support the verdict, which is evidence of sufficient force and character that it will compel reasonable minds to reach a conclusion without resort to speculation and conjecture. *Brown v. State*, 35 Ark. App. 156, 814 S.W.2d 918 (1991). Circumstantial evidence may constitute substantial evidence and be sufficient to sustain a conviction, but when circumstantial evidence alone is relied upon, it must indicate the accused’s guilt and exclude every other reasonable hypothesis. *Id.*

As he did at trial, appellant argues on appeal that the State’s evidence was insufficient to support either burglary charge. He contends that there was no direct evidence that the pry bar found at Hines’s residence was the same pry bar used to gain entry into the homes or that, if it were, appellant was the person who used it. Appellant also asserts that there was no direct evidence linking him to the crimes, noting that he was not found in possession of the stolen property. He suggests that, for a variety of reasons, Hines is the likelier suspect.

Appellant, however, misapprehends our standard of review: we consider the evidence in the light most favorable to the appellee. There was evidence that appellant possessed the pry bar and that the pry bar was used in the Hunter burglary, which reasonably indicates that appellant used the pry bar to gain entry into the Hunter residence. Moreover, possession of recently stolen property is prima facie evidence of guilt of burglary of the party in whose possession the property was found, even if there is no direct evidence of breaking or entering by the party, unless it is satisfactorily accounted for to the jury. *Stout v. State*, 304 Ark. 610, 804 S.W.2d 686 (1991). Despite appellant's contention that Hines was the likelier suspect, Hines testified that appellant possessed the stolen property. Furthermore, appellant possessed the stolen property on the same day and in the same town that it was found to be missing, and there was no evidence to satisfactorily account for appellant's possession of the property. Accordingly, we must conclude that substantial evidence supports appellant's convictions.

Affirmed.

BIRD and MARSHALL, JJ., agree.